

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,)
PLATINUM MOTORS, INC.,)
MATTINGLY AUTO SALES, INC.,)
YOUNG EXECUTIVE MANAGEMENT &)
CONSULTING SERVICES, INC.,)
Individually, and on behalf)
of other members of the)
general public similarly)
situated,)
Plaintiffs,)
-v-) Docket No.
1:14-cv-01589-TWP-DKL
COX ENTERPRISES, INC.,) Class Action
COX AUTOMOTIVE, INC.,)
NEXTGEAR CAPITAL, INC. f/k/a)
DEALER SERVICES CORPORATION,)
successor by merger with)
Manheim Automotive Financial)
Services, Inc., and JOHN WICK,)
Defendants.)

The deposition upon oral examination of **LOURDES M. GIVENS**, a witness produced and sworn before me, Tami L. Scott, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Plaintiffs at the offices of Bose, McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, Marion County, Indiana, on October 20, 2016, at 9:00 a.m., pursuant to the Federal Rules of Civil Procedure.

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1 Q Was Mr. Mattingly a difficult customer for you?

2 A He was a little high maintenance.

3 Q And when you say high maintenance, did he pay close
4 attention to his billing statements?

5 A He wanted a lot of freebies whenever he can get one.

6 Q Do you recall whether this \$60 charge was keyed in
7 wrong?

8 A No. This \$60 most likely is an audit that was late,
9 and we charge a late fee on vehicles that have not
10 been reconciled.

11 Q Did you ever tell him that?

12 A I don't recall.

13 Q Did you report to anybody, to your manager or to
14 anybody in risk that it was a red -- that it raised
15 a flag that he was pushing so hard for a \$60 waiver?

16 A No. That would be me watching my portfolio.

17 Q Did Mr. Mattingly pay close attention to his account
18 and the fees that were charged on there?

19 A I would say so.

20 Q All right. Let me give you back 18, which I think I
21 gave to counsel, and this is e-mails from December
22 of 2011, and who is Julia Mossor, M-O-S-S-O-R?

23 A That was my regional director at the time.

24 Q And I believe you said Micky Agnew was in risk?

25 A Yes.

1 Q And you don't recall Randy Naish?

2 A I'm sorry. I don't recall which department Brandi
3 and Micky were at the time. Looks like the audit
4 reconciliation center.

5 Q I see that. I see Brandi Naish out at -- thank you
6 for that.

7 So is this when you would have received notice
8 of one of the incident reports that we looked at in
9 Exhibit 13? Here you go. Sorry. I stole them all.

10 A This would be the original e-mail that we would get
11 from the audit reconciliation center after an audit
12 gets done by the auditor, and they're letting us
13 know that there is a red flag.

14 Q And so you respond four minutes after you get the
15 original e-mail, very quickly, "I spoke to Barry as
16 soon as the audit came through last night. He
17 stated they've been in contact with you and that
18 units are being transported to auctions and that you
19 all would verify them today. I've locked them as
20 you see. Please follow up and let me know if you
21 have any issues reconciling the audit prior to going
22 into the holidays."

23 What do you mean by you've locked them?

24 A I've locked the account so they cannot use it.

25 Q Meaning they cannot floorplan another vehicle?

1 A Correct.

2 Q Could they get on Discover DSC, or could they not
3 get into their account at all?

4 A Yes.

5 Q I'm sorry?

6 A They can get into their account.

7 Q They just can't -- being locked means they can't
8 floorplan a vehicle?

9 A Right. Correct.

10 Q And then you respond -- oh, then Ms. Naish responds,
11 and she says, "Yes, I have spoken with Barry
12 yesterday and he is following up with me today to
13 get units reconciled before the weekend."

14 Do you recall this incident in December of
15 2011, whether it was resolved?

16 A I do not recall.

17 Q Do you have any reason to believe that it was not
18 resolved?

19 A I don't recall dates. It's been a long time.

20 Q Mattingly remained a customer of yours after
21 December 2011; correct?

22 A I don't recall.

23 Q I'm going to show you what I've marked as 19.

24 *(Plaintiffs' Deposition Exhibit 19 is marked*
25 *for identification.)*

1 Q What is this document?

2 A This looks like a CRM visit.

3 Q What's a CRM visit?

4 A The system that we have to go in there when we go
5 visit a dealer and put notes in, similar to
6 Salesforce.

7 Q So this is an entry that you would make in CRM
8 noting a visit with Mattingly; is that right?

9 A Correct.

10 Q So does this reflect that you visited Mattingly at
11 9 -- well, probably not 9:30 at night?

12 A No.

13 Q But you visited them on April 24th?

14 A Correct.

15 Q 2012?

16 A Correct.

17 Q And LG, your initials?

18 A Yes.

19 Q "Spoke with Barry regarding pending floor paying
20 him. It has been on his floor twice and showing PFC
21 so floor was denied and e-mailed CSC to send title
22 back. We did talked about event sale going on this
23 week. He's planning flooring from them."

24 What is PFC?

25 A So on this note, it looks like Barry was trying to

1 floor a specific source vehicle to pay them direct,
2 but it was flagged in the system because we can --
3 the system will recognize if a vehicle has been
4 floored in the past, which refloors are fine;
5 however, this refloor status, the last time that we
6 did an audit, it was coded that it was sold. So
7 that is a red flag as of why, if it was sold one
8 time, why is the dealer wanting to refloor it when
9 it was sold.

10 Q Okay. How do you recall that it was coded as sold?

11 A Discover will tell us.

12 Q And in any of the reports that we've seen, do any of
13 those reports reflect that, that we've looked at
14 today?

15 A It will not consider -- there's not a stock number
16 in this.

17 Q So this is, you recall that it -- this is based on
18 your recollection, that it was coded as sold?

19 A Yes.

20 Q And who is CSC?

21 A Customer service center.

22 Q Did you ask -- what did Barry tell you about that?

23 A I don't recall.

24 Q But then you talked to him about an event sale going
25 on this week, and he's planning flooring from them.

1 What is that?

2 A If we got specific events in the market, we talked
3 about that as well.

4 Q Like the flyer we looked at earlier?

5 A Correct.

6 Q So this visit on April 24th, whatever concerns you
7 had about this refloor, you were still telling him
8 about additional promotions that DSC was offering;
9 is that correct?

10 A Correct.

11 Q Okay. I'm going to give you 20.

12 *(Plaintiffs' Deposition Exhibit 20 is marked*
13 *for identification.)*

14 Q Exhibit 20 is NG9377. Is this another entry in CRM?

15 A Yes.

16 Q And so does this reflect that you saw Barry the next
17 day?

18 A At the auction.

19 Q Saw Barry at ABC, gave event sale flyer?

20 A Right.

21 Q Do you think it's that same event that you were
22 referring to in Exhibit 19?

23 MR. VINK: 19 is the previous exhibit.

24 A It looks like it.

25 Q Okay. I'm going to show you what I'm going to mark

1 as 21.

2 (Plaintiffs' Deposition Exhibit 21 is marked
3 for identification.)

4 Q And that's NG6535. And again, is this another entry
5 in CRM?

6 A Yes.

7 Q Okay. And this is May 4th, so about ten days or so
8 after you saw Barry at the auction and visited him
9 at his lot, and it says, "After...", and again, this
10 is a note that you made?

11 A Yes.

12 Q "After discussing with GM Manheim Louisville
13 possibly pup cars from this dealer I immediately
14 locked his account. One slipped thru before I
15 placed lock, the other floor I denied. Started to
16 get my phone blasted by Barry and e-mails from CSC
17 Barry calling I finally told him we would discuss
18 Monday. Now he's still calling 7:30 p.m. when I had
19 to put a stop and said Monday end discussion. I
20 will do full blown audit Monday on him and decide
21 where to go from there."

22 What do you remember about this?

23 A I was talking to Manheim Louisville.

24 Q That's an auction?

25 A Yes.

1 Q Okay.

2 A And there were some -- I just don't -- I can't
3 remember the whole details of this as far as the
4 conversation with Manheim Louisville, but basically
5 upon some notes in the system that were suspicious
6 with the flooring vehicles that PFC that was trying
7 to be refloored, I basically said let me go do a
8 full-blown audit myself rather than counting on an
9 actual auditor, and then I will decide at that point
10 if we're good.

11 Q Okay. So who was the GM in Manheim Louisville? Do
12 you remember?

13 A I don't remember.

14 Q GM is general manager?

15 A General manager.

16 Q You don't remember that person's name?

17 A No.

18 Q What are pup cars?

19 A Pick-up.

20 Q What are pick-up cars?

21 A Pick-up. So I was going to pick up the cars if I
22 needed to.

23 Q And why did that cause you to lock the Mattingly
24 account?

25 A Whenever there is some kind of question about an

1 account, I would rather put a lock on the account
2 and to stop the bleeding, if there is more bleeding,
3 until I know that we're safe.

4 Q So you don't remember what your discussion with the
5 GM of Manheim Louisville was about?

6 A I don't remember the details, but I know that there
7 was some red flag for me to write this. I just
8 don't know the details of them.

9 Q Does this writeup include any of the red flags, the
10 details of the red flags?

11 A No.

12 Q Do you recall discussing with Mr. Mattingly on
13 Monday why you had locked his account?

14 A I did an audit on that following Monday like I said
15 I was going to, and he took me -- I verified the
16 vehicles that were at the lot along with my
17 receivable detail, and then he took me to different
18 parts of in town to verify other vehicles that were
19 on supposedly test drives.

20 Q Were you able to verify all the vehicles?

21 A I don't recall that I verified all the vehicles.

22 Q And what did you do after that Monday audit?

23 A Well, when I did that audit, there were several
24 vehicles where he took me to different places that
25 had personal items in there.

1 Q In?

2 A In the vehicles.

3 Q Okay.

4 A License plates, and like I said, personal items in
5 there. That is a red flag. That, to us, tells us
6 this dealer has sold these vehicles and is calling
7 them as demos or test drives and when they're
8 actually sold out of trust.

9 Q Did you ask Mr. Mattingly if those vehicles had been
10 sold out of trust?

11 A Yes.

12 Q And what did he say?

13 A He said they're on test drives.

14 Q Do you know whether Mr. Mattingly had salespeople
15 who operated on behalf of Mattingly?

16 A I do not recall.

17 Q Were dealers allowed to have cars out with their
18 salespeople?

19 A We don't allow demos.

20 Q What's a demo versus a test drive?

21 A A test drive, typically when a customer is going to
22 buy a car, you go for a test drive; it typically
23 takes five, ten minutes, and then you bring it back.
24 So typically, test drives should be back at the lot.

25 Q And is that in the promissory note? Where, to your

1 knowledge, where is the provision that DSC does not
2 allow demos?

3 A It's in the contract, but I don't remember where.

4 Q Okay. So you remember doing the audit that Monday?

5 A Yes.

6 Q And then you found the vehicles with personal items,
7 and what did you do next?

8 A Well, one of the triggers was there was a BMW that
9 he said, oh, yeah, the BMW convertible is in a
10 storage facility in town due to all the hail damage
11 that we've had. I wanted to store it in my storage
12 facility in town.

13 And when I went -- when he took me to the
14 in-town storage facility, it was the -- it was a
15 garage in the back of a chiropractor. He opened the
16 door. I looked at the VIN. The vehicle was locked.
17 I glanced at the VIN number, glanced inside the
18 vehicle, and there is personal items in there, and
19 there is a plate. It's plated. So to me, if you
20 have a detached garage that you have plenty of
21 storage, why are you putting a vehicle in storage
22 all the way in town? That was a red flag.

23 Q Did you ask him?

24 A No. At this point, all I'm doing is taking notes.

25 And I did ask him, and he said, well, it was because

1 of the hail, and I just left it at that.

2 So when he takes me to the school facility and
3 tells me that a teacher is test driving this
4 vehicle, again, I look inside and I see personal
5 items; the vehicle was dirty, plated. That's a red
6 flag.

7 Then he takes me over to another house and
8 tells me that these are his silent partners, and I
9 verify, I believe, one or two cars. And then he
10 took me to another house, and a gentleman comes out
11 with a baby in the hand and says, oh, I just need to
12 check this vehicle. I looked at the vehicle,
13 personal items, in a carport, in a personal home.
14 That was a red flag.

15 So at that point, I just needed to go in, pull
16 files, see if there was some kind of silent partner,
17 look at documentation and see what did I have in my
18 hands. So I finished the audit and I went home.

19 Q He said they were a silent partner or they were
20 salespeople?

21 A Silent partner.

22 Q So can you turn to Exhibit 10, the lending summary
23 that Mark Holley wrote, and he was talking about the
24 little higher offsite average on the back. "The
25 first is that this is typically a lower volume

1 dealer that has a full time job and is driving one
2 at all times and not at the lot." Do you see that,
3 the bottom of that last paragraph?

4 A Yes.

5 Q Was the dealer allowed to drive a car that was
6 floorplanned by DSC?

7 A Yes. He would drive himself one here and there and
8 then be back at the lot with it.

9 Q That was allowed under the terms of the contract?

10 A That was an exception that we would do.

11 Q Okay. And that same exception wasn't available to
12 salespeople working for the dealers?

13 A No. Just for the owner.

14 Q And is that laid out in the contract?

15 A I don't recall.

16 Q I'm going to show you two pages that I'm going to
17 mark as 22.

18 *(Plaintiffs' Deposition Exhibit 22 is marked*
19 *for identification.)*

20 Q And they're -- I believe they are notes from the CRM
21 system, two different notes on the same day. They
22 are marked, just so we're clear, NG6540 and NG9378.

23 Do you recall the dealer had an NSF, or do you
24 recall that Mattingly had an NSF a few weeks prior
25 to May 7th, 2012?

1 A I didn't recall until I read this, so yes.

2 Q So is one NSF enough to default a dealer?

3 A I don't know how many he had.

4 Q Well, as of the summary you wrote in August of 2011,
5 he had none; correct? I think it was Exhibit 12.

6 A I don't have 12.

7 Q It's at the top of the third page there.

8 A Right. This was in August of 2011.

9 Q He had had no NSFs?

10 A Right.

11 Q If he'd had an NSF, wouldn't it show up in the
12 Discover system in Exhibit 13?

13 A Not on this Exhibit 13, because we don't have all
14 the notes clearly displayed.

15 Q An NSF wouldn't be enough to generate its own
16 incident?

17 A Yes.

18 Q It would not be or it would be? I'm sorry.

19 A It would be. It would create an incident.

20 Q Do you see an incident in Exhibit 13 for an NSF?

21 A Looks like May 11, 2012 is when they did the -- when
22 they put it as a terminate. But without being able
23 to go in there, nobody can really see this.

24 Q Would it be -- did we establish that all the detail
25 was found in Exhibit 15, NG3809?

1 MR. VINK: While she's looking for that, I
2 actually have another deposition I have to get to,
3 so David will take over from here on out, and you
4 guys can wrap things up.

5 MS. LASKY: Thank you.

6 *(Mr. Vink leaves deposition proceedings.)*

7 A This could be an NSF at the auction level. If it's
8 not created in here, it was at the auction level,
9 but I don't recall.

10 Q Okay. But just so the record is clear, you don't
11 see a reference to NSF in either Exhibit 13 or
12 Exhibit 15; is that correct?

13 A Correct.

14 Q All right. So turning back to Exhibit 22, your
15 entry, "have a feeling he's flipping cars and
16 over-flooring after speaking to Donna with MAFS.
17 Did audit accounted for all units."

18 So is that reflecting that the audit you just
19 spoke of, you were able to account for all units,
20 but they were in places that you didn't expect; is
21 that correct?

22 A Correct.

23 Q But you were able to find all the cars?

24 A Correct.

25 Q So what do you recall about who is Donna with MAFS?

1 Let's start there.

2 A She was the MAFS manager at Manheim Louisville at
3 the time.

4 Q Okay. And what do you recall about your
5 conversation with Donna?

6 A That the dealer appeared to be flipping cars with
7 other dealers.

8 Q What does that mean?

9 A Looks like they were running cars under OVE, which
10 is a platform that we have, Manheim has, and when we
11 started to cross-reference the units that were
12 floored on his receivable detail, and she has access
13 to OVE, the prices were much higher.

14 So at that point, I asked that night for copies
15 of all the titles that Barry had floored on his line
16 of credit to actually see the transactions.

17 Q When you say the prices were much higher, what do
18 you mean by that?

19 A So we established that if it's a specific source fee
20 and a vehicle -- a dealer buys it for \$12,000, but
21 it books for ten, we're only going to give them ten.
22 Somehow, it looks like he learned that if he did it
23 on an OVE transaction, because that's considered a
24 universal source, we would pay full price. So when
25 I was looking at some of the vehicles that he had

1 floored, he would have a vehicle floored that was
2 worth seven grand, and he had it floored for twelve,
3 just to give examples.

4 Q And do you know whether OVE, whether -- when cars
5 are listed through OVE whether there is any
6 verification of the price?

7 A There is no verification because it's an auction
8 purchase. It's considered an auction purchase.

9 Q Who sets the prices on OVE?

10 A The seller sets the price.

11 Q How are vehicles listed on OVE?

12 A Basically, an OVE is like a dealer-to-dealer
13 transaction versus having a live auction behind it.
14 So to your point, OVE, if I have a vehicle and I'm
15 selling for \$12,000, by now you can come in and say,
16 okay, I'll pay your price for \$12,000 and there
17 is -- the transaction gets put together as if it was
18 an auction.

19 Q What is the purpose of OVE?

20 A So that the dealers don't have to have vehicles on
21 site. This is all a platform that dealers can buy
22 online.

23 Q So it is -- but they're all prearranged sales
24 between buyers and sellers?

25 A No. It's a vehicle that's -- there is a hosting

1 auction, so let's say the hosting auction will be
2 Manheim Louisville, so anybody that's going to go on
3 OVE to look at Pontiac G6s in the Louisville area,
4 this vehicle will be popping up under Manheim
5 Louisville, and if the dealer decides that he's
6 going to pay what the seller wants, then it counts
7 as a sale under Manheim Louisville. But it is an
8 online platform.

9 Q So is it like eBay?

10 A Yes.

11 Q So it's a public --

12 A No.

13 Q -- auction?

14 A No. Dealer. Dealer to dealer.

15 Q Okay. But any dealer can log on and bid on a car, a
16 qualified dealer?

17 A As long as they have a log-in with Manheim, yes.

18 Q And so the dealers list the cars themselves on OVE,
19 or the sellers? I'm sorry.

20 A I don't recall the details on how OVE a hundred
21 percent operates.

22 Q If Mr. Mattingly testified yesterday that Donna
23 Kronauer listed vehicles on OVE for Mattingly, would
24 you have any reason to dispute that?

25 A I don't know. I can't recall or have knowledge of

1 who because that's at the auction level, so I don't
2 know.

3 Q And I believe you testified earlier that dealers
4 could floorplan vehicles they already owned; is that
5 correct?

6 A Yes.

7 Q You say at the end of this, "Will evaluate discuss
8 with Julie then see if possibly repo." Who -- oh,
9 is that Julia?

10 A Mossor.

11 Q Julia Mossor, your regional rep?

12 A My regional director.

13 Q Director. I'm sorry. Do you recall your
14 conversations with her?

15 A I do not.

16 Q Did you ever recommend that your customers list
17 vehicles on OVE?

18 A I tell the customers of every way that they can
19 possibly remarket their vehicles, whether it's a
20 Manheim facility or it's an online platform, whether
21 it's taking it to independent auctions that dealers
22 did not know about.

23 Q And would you direct people to Donna Kronauer if
24 they wanted to utilize OVE?

25 A No. I would direct them over to Manheim Louisville.

1 Q And she was at Manheim Louisville; correct?

2 A Right. She was the MAFS manager, and I believe she
3 was credit and collections at the same time back
4 then.

5 Q So you would direct them to Manheim Louisville
6 generally, but not her specifically?

7 A Correct.

8 Q Would they end up speaking to her because she was
9 the MAFS manager?

10 A I don't know how their procedures were. Typically
11 on an OVE transaction, they go to dealer sales, and
12 the dealer sales rep would assist them or a field
13 rep for their -- for that particular market region
14 will assist the dealer.

15 Q Did you ever, after May 7th, and I believe May 7th
16 was the Monday after the Friday that you --
17 Mr. Mattingly was trying to reach you, you did the
18 audit on May 7th, correct, and Mr. Mattingly took
19 you around to the various places?

20 A Uh-huh.

21 Q Did you ever have a conversation with Mr. Mattingly
22 about whether he was flipping cars and
23 over-flooring?

24 A No, because I didn't have all my paperwork in front
25 of me. All I had was the receivable details showing

1 the cars, so I'm able to see what the cars are
2 floored for, looking at the condition and the type
3 of vehicle, and at that point, I would actually have
4 to ask corporate to send me copies of all the titles
5 and all the bills of sale so that I could sit down
6 and compare apples to apples.

7 Q So not limited to May 7th, but at any time after
8 May 7th, did you ask Mr. Mattingly what he -- about
9 whether he was flipping cars and over-flooring?

10 A I did not.

11 Q Did you ever get the information you requested from
12 corporate?

13 A Yes, I did.

14 Q And after you received that information, you never
15 spoke to him?

16 A Well, what happened was that evening, after
17 reviewing my documentation and seeing how the titles
18 were not jiving with dates or signatures or the
19 proper -- the proper -- I don't want to say
20 procedure, because it's not procedure, but it's
21 just, there was something that did not feel right
22 after seeing the documentation versus what he paid
23 for and how they were floored. And plus, me doing
24 an audit and seeing those vehicles off-site plated
25 with personal items inside the vehicles, that, to